

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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| MICHAEL J. DUNLAVEY, <i>et al.</i> , | : | No. 4:16-CV-02404 |
| | : | |
| Plaintiffs, | : | (Judge Brann) |
| | : | |
| v. | : | (Magistrate Judge Saporito) |
| | : | |
| H.J. JOHN B. LEETE, <i>et al.</i> , | : | |
| | : | |
| Defendants. | : | |

ORDER

SEPTEMBER 26, 2017

Before the Court for disposition is a Report and Recommendation filed by Magistrate Judge Joseph F. Saporito, Jr. on July 13, 2017.¹ In this Report, Magistrate Judge Saporito recommended that (1) *pro se* Plaintiff Michael J. Dunlavey's Complaint against Defendants the Honorable John B. Leete of the Potter County Court of Common Pleas, Assistant District Attorney Andy Watson of the Potter County District Attorney's Office, Captain William Wenzel and Corporal Phelps of the Coudersport Borough Police Department be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), 28 U.S.C. § 1915(e)(2)(B)(ii), and 28 U.S.C. § 1915(e)(2)(B)(iii); (2) leave to file a curative amendment be denied as futile pursuant to *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 108 (3d Cir.

¹ ECF No. 17.

2002); and (3) the Clerk be directed to close this case.² No objections to this Report and Recommendation have since been filed.

Upon designation, a magistrate judge may “conduct hearings, including evidentiary hearings, and . . . submit to a judge of the court proposed findings of fact and recommendations.”³ Once filed, this Report and Recommendation is disseminated to the parties in the case who then have the opportunity to file written objections.⁴ Where no objection is made to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”⁵ Nevertheless, whether timely objections are made or not, the district court may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge.⁶

Following independent review of the record, I am satisfied that the Report and Recommendation contains no clear facial error. In the interests of judicial economy, I will not rehash Magistrate Judge Saporito's sound reasoning and legal citation. The Court is in full agreement that Plaintiff Michael J. Dunlavey's

² *Id.*

³ 28 U.S.C. 636(b)(1)(B).

⁴ 28 U.S.C. 636(b)(1).

⁵ *Rieder v. Apfel*, 115 F.Supp.2d 496, 499 (M.D.Pa. 2000) (citing *United States v. Raddatz*, 447 U.S. 667, 676 (1980)).

⁶ 28 U.S.C. § 636(b)(1); Local Rule 72.31.

Complaint is frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), fails to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), and advances a claim for monetary relief against an immune defendant pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii).

AND NOW, therefore, **IT IS HEREBY ORDERED** that:

1. Magistrate Judge Joseph F. Saporito, Jr.'s Report and Recommendation (ECF No. 17) is **ADOPTED IN ITS ENTIRETY**;
2. The Complaint (ECF No. 1) and the Amended Complaint (ECF No. 16) are **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i); for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii); and for seeking monetary relief against a defendant who is immune from which such relief pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii);
3. Leave to file a curative amendment be **DENIED** as Plaintiff's claims are frivolous and any attempt to amend would be futile; and
4. The Clerk of Court is directed to close this case.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann
United States District Judge